The opinion in support of the decision being entered today is <u>not</u> binding precedent of the Board.

Paper 25

By:

Trial Section Merits Panel Board of Patent Appeals and Interferences U.S. Patent and Trademark Office P.O. Box 1450

Alexandria, VA 22313-1450 Tel: 703-308-9797 Fax: 703-305-0942 Filed: June 18, 2004

### UNITED STATES PATENT AND TRADEMARK OFFICE

# BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

## R. KENT HERMSMEYER

Junior Party, (Application 10/266,379),

v.

MAILED

JUN 1 8 2004

PAT. & T.M. OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES

## HOWARD L. LEVINE and WILLIAM J. BOLOGNA

Senior Party (Patent Nos. 6,054,447 and 5,985,861).

Patent Interference No. 105,186

Before: LEE, MOORE and POTEATE, Administrative Patent Judges.

POTEATE, Administrative Patent Judge.

### **JUDGMENT-RULE 662**

On June 9, 2004, the Board received from junior party Hermsmeyer a Request for Adverse Judgment as to Counts 1 and 2 (Paper 24). Accordingly, it is

**ORDERED** that judgment on priority as to Counts 1 and 2 (Paper 1 at 5), the sole counts of the interference, is awarded against junior party R. KENT HERMSMEYER.

**FURTHER ORDERED** that junior party R. KENT HERMSMEYER is not entitled to a patent containing claims 1, 3, 5 & 6 and claims 2 and 4 of Application 10/266,379, which correspond to Counts 1 and 2, respectively.

**FURTHER ORDERED** that a copy of this paper shall be made of record in files of Application 10/266,379, U.S. Patent 6,054,447 and U.S. Patent 5,985,861.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

AMESON LEE

Administrative Patent Judge

JAMES C. MOORE

Administrative Patent Judge

BOARD OF PATENT APPEALS AND

**INTERFERENCES** 

LINDA R. POTEATE

Administrative Patent Judge

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